

**2003 BOARD OF SUPERVISORS CORRESPONDENCE
DOCUMENTS FOR COUNTY COUNSEL WEBSITE**

DATE	SUBJECT	AUTHOR	FORTNER/ MAIN	WEBSITE YES/NO
09/18/03	SVREP, et al. v. Shelley, Case No. 03-56498 Letter Brief Filed by the Various Parties in the Ninth Circuit	Judy Whitehurst	RGF: 09/18/03	ye



COUNTY OF LOS ANGELES
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September 17, 2003

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TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
SUPERVISOR GLORIA MOLINA
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **SVREP, et al v. Shelley, Case No. 03-56498; Letter Brief Filed
by the County of Los Angeles in Ninth Circuit**

Please find enclosed a copy of the letter filed today requesting that the Ninth Circuit Court of Appeals grant the County's request to file an amicus brief in an En Banc Rehearing of the above case.

We will keep you advised as the case progresses. If you or your staff have any questions, please contact Senior Deputy County Counsel Judy W. Whitehurst at 974-8948.

LWP:JWW:ds

Enclosures

c: David E. Janssen,
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

Conny McCormack,
Registrar-Recorder/County Clerk



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VIA Molly_dwyer@ca9.uscourts.gov & U.S. MAIL

Ms. Cathy Catterson
Clerk of the Court
United States Court of Appeal for the Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

Attention: THOMAS, En Banc Coordinator

**Re: SVREP, et al. v. Shelley, Case No. 03-56498
(D.C. No. CV-03-05715-SVW)**

**Motion to File Amicus Brief; Declaration of Conny B.
McCormack**

Dear Ms. Catterson:

Pursuant to the Order of the En Banc Coordinator filed September 16, 2003, in the above-entitled matter (copy attached), the County of Los Angeles hereby submits the declaration of the Los Angeles County Registrar-Recorder/County Clerk ("Registrar"), Ms. Conny B. McCormack, as a friend of the Court, on the question whether or not this case should be reheard en banc.


In view of the unprecedented urgency of this matter as reflected in the Order of the En Banc Coordinator, the County of Los Angeles respectfully requests that this letter be deemed a motion for leave to file an amicus-curiae pursuant to Federal Rules of Appellate Procedure, Rule 29.

Los Angeles County Registrar is the elections official for the largest voting jurisdiction in the State of California with approximately 4 million registered voters. Her declaration is offered to assist the En Banc Court in making a determination as to whether rehearing should be granted.

The declaration provides insight into the complexities of administering the recall election in conjunction with the March 2, 2004, primary election, as would be required if the panel's decision is not reviewed.

An amicus brief is desirable in this matter as neither the District Court nor the Court of Appeal has had the opportunity to understand the impact on the Registrar's ability to administer an election in March of 2004.

Respectfully submitted,



LLOYD W. PELLMAN
County Counsel

Attachments

c: Attached Service List

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 16 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

SOUTHWEST VOTER REGISTRATION
EDUCATION PROJECT; SOUTHERN
CHRISTIAN LEADERSHIP
CONFERENCE OF GREATER LOS
ANGELES; NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE; CALIFORNIA
STATE CONFERENCE OF BRANCHES,

Plaintiffs - Appellants,

v.

KEVIN SHELLEY, in his official capacity
as California Secretary of State,

Defendant - Appellee,

TED COSTA,

Intervenor-Appellee.

No. 03-56498

D.C. No. CV-03-05715-SVW

ORDER

Before: THOMAS, En Banc Coordinator.

The parties, including the intervenor, shall file simultaneous briefs, not to exceed 15 pages or 7,000 words, setting forth their views on whether or not this case should be reheard en banc. The briefs shall be filed with the Clerk no later than Wednesday, September 17, at 2:00 p.m., P.D.T. The briefs may be filed in

letter format and shall be sent to the Court electronically.

Issuance of the mandate will be stayed pending further order of this Court.

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1. The matters stated herein are true and of my own personal knowledge, except for any matter stated under information and belief, which I believe to be true. If called as a witness, I would be competent to testify to the facts set forth in this declaration.

3. The County of Los Angeles is the largest centralized voting jurisdiction in the United States, serving more than 4 million registered voters. I am responsible, among other matters, for the conduct of all federal, state and county elections conducted within Los Angeles County, including the gubernatorial recall election scheduled for October 7, 2003.

5. The punch card voting system has been in use in Los Angeles County for 35 years, with over 100 million ballots cast in Los Angeles County at thousands of elections since 1968. The system remains certified by the Secretary of State for use by California counties until March 1, 2004. For the March 2, 2004 Primary Election, the County of Los Angeles will transition to a new optical scan voting system called InkaVote which is similar in many ways to the punch card voting system. InkaVote uses a single small ballot card that, like the punch card, is printed with only numbers on the ballot card. The ballot card is inserted into a voting device that contains printed pages listing the candidates' names and a designated number for each candidate. Voters insert a pen through the hole in the InkaVote device to make an ink mark onto the ballot card next to the number associated with the candidate of choice, rather than using a punching stylus to punch a hole through the ballot card as is done with the punch card system.

1 6. Like the punch card voting system, the InkaVote system which the County of Los
2 Angeles will be using in the March 2, 2004 primary election has a limited ballot capacity of 12 (twelve)
3 pages to list candidates and ballot measures. The recall election with 135 candidates takes up eight
4 pages. If the recall election were consolidated with the primary election the number of pages required to
5 print the contests scheduled for the primary election for President, Congress, State Senate, State
6 Assembly, the Board of Supervisors, Judges, etc., plus various ballot measures, would exceed the 12-
7 page capacity of the InkaVote system.

8 7. Holding the regularly scheduled primary election in March 2004, in conjunction with the
9 recall election, would require Los Angeles County to use two different voting systems in the same
10 election, InkaVote System coupled with some other type of paper ballot system. Using two different
11 systems at the voting precincts has never been done before in Los Angeles County. One hundred
12 percent of the voters in Los Angeles County will be confronted with the challenge of learning how to
13 use the new voting system, InkaVote, in the primary election. To require voters to master the use of two
14 unfamiliar voting systems at the same election invites confusion and ballot errors.

15 8. Currently, Los Angeles County does not have a system in place that could handle the
16 capacity required for the March primary to be combined with the recall election. Los Angeles County
17 would have to acquire additional equipment to accommodate the candidates/contests in both elections.

18 9. Another complexity of conducting the recall election at the same time as the primary
19 election is that for California's closed primary election voters must declare their political party
20 affiliation prior to voting. This declaration is made in order to receive the correct ballot for the political
21 party with which the voter is registered. We have seven different political parties, with seven different
22 ballots, i.e. democrat, republican, libertarian, et. cetera. However, the recall election is a general
23 election with numerous partisan candidates and every voter may vote across party lines for his/her
24 choice for governor. Attempting to combine these two totally different types of elections has never
25 been done before and would, in my opinion, result in significant voter confusion and enhanced potential
26 for error.

1 10. Should the recall election proceed on October 7, 2003, the ballot will be relatively
2 simple. Voters will have a maximum of four selections to make, and, in Los Angeles County, voters
3 would be using the punch card system which has been used for voting here for the last 35 years.

4 11. For the recall election scheduled for October 7, 2003, Los Angeles County has mailed out
5 332,900 absentee ballots and already received back 41,796 absentee ballots cast by voters. Absentee
6 voters have called my office to express concern and confusion as to whether they will need to vote again
7 should the recall election be postponed until March.

8 12. In terms of costs of the election, Los Angeles County has already incurred more than
9 50% of the costs of the recall election or approximately \$7,000,000 as 3.85 million sample ballots have
10 been printed and mailed, all official ballots and election supplies have been purchased, hundreds of
11 thousands of absentee ballots have been printed and mailed and hundreds of additional temporary
12 employees were hired and have been working for weeks to prepare the myriad tasks associated with
13 conducting a statewide election.

14 13. On Tuesday, September 16, 2003, I made a televised public presentation to the Los
15 Angeles County Board of Supervisors on the problems associated with delaying the election to March
16 2004. Attached hereto is a true and correct copy of the transcription of my public presentation to the
17 Board.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed this 17th day of September, 2003, at Norwalk, California.

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22 CONNY B. MCCORMACK
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